



# Request for Proposal 07-X-38683

## For: Management Consulting: Energy Impact Evaluation, NJ Clean Energy Program

Event	Date	Time
<b>Bidder's Electronic Question Due Date</b> (Refer to <a href="#">RFP Section 1.3.1</a> for more information.)	08/11/2006	5:00 PM
<b>Mandatory Pre-bid Conference</b>	Not Applicable	
<b>Mandatory Site Visit</b>	Not Applicable	
<b>Bid Submission Due Date</b> (Refer to <a href="#">RFP Section 1.3.2</a> for more information.)	09/20/2006	2:00 PM

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

<b>Small Business Set-Aside</b> (Refer to <a href="#">RFP Section 4.4.2.2</a> for more information.)	<b>Status</b> <input type="checkbox"/> Not Applicable <input type="checkbox"/> Entire Contract <input type="checkbox"/> Partial Contract <input checked="" type="checkbox"/> Subcontracting Only	<b>Category</b> <input checked="" type="checkbox"/> I <input checked="" type="checkbox"/> II <input checked="" type="checkbox"/> III
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RFP Issued By

State of New Jersey  
Department of the Treasury  
Division of Purchase and Property  
Trenton, New Jersey 08625-0230

Using Agency

State of New Jersey  
Board of Public Utilities

Date: July 28, 2006

## Table of Contents

<b>1.0 INFORMATION FOR BIDDERS.....</b>	<b>5</b>
1.1 PURPOSE AND INTENT .....	5
1.2 BACKGROUND.....	5
1.2.1 DESCRIPTION OF THE OCE AND NJCEP .....	5
1.2.2 EVALUATION AND RESEARCH OF PROGRAMS.....	7
1.3 KEY EVENTS .....	8
1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD .....	8
1.3.2 SUBMISSION OF BID PROPOSAL .....	8
1.3.3 MANDATORY SITE VISIT .....	8
1.3.4 MANDATORY PRE-BID CONFERENCE.....	8
1.3.5 DOCUMENT REVIEW .....	9
1.4 ADDITIONAL INFORMATION.....	9
1.4.1 ADDENDA: REVISIONS TO THIS RFP.....	9
1.4.2 BIDDER RESPONSIBILITY .....	9
1.4.3 COST LIABILITY .....	9
1.4.4 CONTENTS OF BID PROPOSAL .....	9
1.4.5 BID OPENING.....	10
1.4.6 PRICE ALTERATION.....	10
1.4.7 JOINT VENTURE.....	10
<b>2.0 DEFINITIONS .....</b>	<b>11</b>
2.1 GENERAL DEFINITIONS.....	11
2.2 CONTRACT SPECIFIC DEFINITIONS .....	12
<b>3.0 SCOPE OF WORK.....</b>	<b>15</b>
3.0.1 GOALS AND OBJECTIVES .....	15
3.1 PROJECT CONTROL .....	15
3. 1.1 BPU CONTRACT MANAGER AND CEEEP .....	15
3.2 KICK-OFF MEETING .....	16
3.3 APPROACH TO EVALUATION REPORT (WORK PLAN).....	16
3.4 MONTHLY PROGRESS REPORT.....	17
3.5 INTERMITTENT CONFERENCES.....	17
3.6 COORDINATE WITH OTHER STATE, NATIONAL AND REGIONAL EVALUATION ACTIVITIES.....	17
3.7 REVIEW PREVIOUS STUDIES .....	17
3.8 EVALUATION METHODOLOGIES .....	17
3.9 IMPACT EVALUATION .....	18
3.10 NET SAVINGS .....	19
3.11 DRAFT REPORT.....	19
3.12 EXIT CONFERENCE .....	19
3.13 FINAL REPORT .....	19
<b>4.0 BID PROPOSAL PREPARATION AND SUBMISSION.....</b>	<b>21</b>
4.1 GENERAL .....	21
4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION.....	21
4.3 NUMBER OF BID PROPOSAL COPIES .....	21
4.4 BID PROPOSAL CONTENT .....	21
4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL .....	21
4.4.1.1 SIGNATORY PAGE.....	21
4.4.1.2 OWNERSHIP DISCLOSURE FORM .....	21
4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER .....	22
4.4.1.4 NOTICE OF INTENT TO SUBCONTRACT FORM.....	22
4.4.1.5 SUBCONTRACTOR UTILIZATION FORM.....	22
4.4.2 PROOF OF REGISTRATIONS THAT MUST BE SUBMITTED WITH THE BID PROPOSAL .....	22
4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE .....	22
4.4.2.2 SMALL BUSINESS SET-ASIDE CONTRACTS.....	22

4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.....	23
4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION .....	23
4.4.3.2 AFFIRMATIVE ACTION.....	23
4.4.3.3 SERVICES SOURCE DISCLOSURE FORM.....	23
4.4.4 TECHNICAL PROPOSAL .....	23
4.4.4.1 MANAGEMENT OVERVIEW.....	23
4.4.4.2 CONTRACT MANAGEMENT .....	24
4.4.4.3 CONTRACT SCHEDULE.....	24
4.4.4.4 MOBILIZATION AND IMPLEMENTATION PLAN.....	24
4.4.4.5 POTENTIAL PROBLEMS .....	24
4.4.5 ORGANIZATIONAL SUPPORT AND EXPERIENCE .....	24
4.4.5.1 LOCATION.....	24
4.4.5.2 ORGANIZATION CHART (CONTRACT SPECIFIC) .....	24
4.4.5.3 RESUMES .....	25
4.4.5.4 BACKUP STAFF .....	25
4.4.5.5 ORGANIZATION CHART (ENTIRE FIRM).....	25
4.4.5.6 EXPERIENCE OF BIDDER ON CONTRACTS OF SIMILAR SIZE AND SCOPE .....	25
4.4.5.7 FINANCIAL CAPABILITY OF THE BIDDER.....	25
4.4.5.8 SUBCONTRACTOR(S).....	26
4.4.6 PRICE SCHEDULE.....	27
<b>5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS.....</b>	<b>28</b>
5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS.....	28
5.2 CONTRACT TERM AND EXTENSION OPTION .....	28
5.3 CONTRACT TRANSITION.....	28
5.4 CONTRACT AMENDMENT .....	28
5.5 CONTRACTOR RESPONSIBILITIES .....	28
5.6 SUBSTITUTION OF STAFF .....	29
5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S) .....	29
5.8 OWNERSHIP OF MATERIAL .....	29
5.9 DATA CONFIDENTIALITY .....	30
5.10 NEWS RELEASES .....	30
5.11 ADVERTISING .....	30
5.12 LICENSES AND PERMITS .....	30
5.13 CLAIMS AND REMEDIES.....	30
5.13.1 CLAIMS.....	30
5.13.2 REMEDIES.....	31
5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS.....	31
5.14 LATE DELIVERY .....	31
5.15 RETAINAGE.....	31
5.16 STATE'S OPTION TO REDUCE SCOPE OF WORK .....	31
5.17 SUSPENSION OF WORK.....	31
5.18 CHANGE IN LAW.....	31
5.19 CONTRACT PRICE INCREASE (PREVAILING WAGE) .....	32
5.20 ADDITIONAL WORK AND/OR SPECIAL PROJECTS .....	32
5.21 FORM OF COMPENSATION AND PAYMENT.....	32
5.21.1 PAYMENT TO CONTRACTOR - OPTIONAL METHOD.....	33
5.22 MODIFICATIONS AND CHANGES TO THE NJ STANDARD TERMS AND CONDITIONS VERSION 05 09 06 .....	33
5.22.1 PATENT AND COPYRIGHT INDEMNITY .....	33
5.22.2 INDEMNIFICATION .....	34
5.22.3 INSURANCE - PROFESSIONAL LIABILITY INSURANCE .....	34
<b>6.0 PROPOSAL EVALUATION/CONTRACT AWARD .....</b>	<b>35</b>
6.1 PROPOSAL EVALUATION COMMITTEE .....	35
6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL.....	35
6.3 EVALUATION CRITERIA .....	35
6.3.1 TECHNICAL EVALUATION CRITERIA .....	35
6.3.2 BIDDER'S PRICE SCHEDULE .....	36
6.3.3 BID DISCREPANCIES .....	36

6.3.4 EVALUATION OF THE BID PROPOSALS .....	36
6.4 NEGOTIATION AND BEST AND FINAL OFFER (BAFO).....	36
<b>7.0 CONTRACT AWARD .....</b>	<b>38</b>
7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD .....	38
7.1.1 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134).....	38
7.1.1.1 DEFINITIONS .....	38
7.1.1.2 BREACH OF TERMS OF THE LEGISLATION.....	38
7.1.1.3 CERTIFICATION AND DISCLOSURE REQUIREMENTS.....	39
7.1.1.4 STATE TREASURER REVIEW .....	39
7.1.1.5 ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 271.....	39
7.1.2 SOURCE DISCLOSURE REQUIREMENTS.....	40
7.1.2.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2.....	40
7.1.2.2 SOURCE DISCLOSURE REQUIREMENTS .....	40
7.1.2.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129.....	40
7.2 FINAL CONTRACT AWARD .....	40
7.3 INSURANCE CERTIFICATES .....	40
7.4 PERFORMANCE BOND .....	40
<b>8.0 CONTRACT ADMINISTRATION.....</b>	<b>41</b>
8.1 CONTRACT MANAGER .....	41
8.1.1 BPU CONTRACT MANAGER RESPONSIBILITIES .....	41
8.1.2 COORDINATION WITH THE BPU CONTRACT MANAGER .....	41

## **1.0 INFORMATION FOR BIDDERS**

### **1.1 PURPOSE AND INTENT**

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury (the "Division"), on behalf of the State of New Jersey, Board of Public Utilities (BPU), Office of Clean Energy (OCE). The purpose of this RFP is to solicit bid proposals to engage a contractor to perform an evaluation of impacts of the energy efficiency and renewable energy programs.

The intent of this RFP is to award a contract to that responsible bidder whose bid proposal, conforming to this RFP is most advantageous to the State, price and other factors considered. However, the State reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Director to be in the State's best interest.

The NJ Standard Terms & Conditions version 05 09 06 will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

### **1.2 BACKGROUND**

The work of this contract focuses on the energy efficiency and renewable energy programs administered by the BPU, OCE and managed by the State's seven (7) investor owned electric and natural gas utilities (Utilities) and the OCE. The results of the impact evaluation should assist the OCE in determining the net and gross energy impacts of the programs. The results of this contract will help OCE update and modify its protocols to measure resource savings.

Following are the Programs that the contractor will evaluate:

#### **Residential Energy Efficiency Programs:**

- Residential Electric and Gas HVAC Program
- Residential New Construction (RNC) Program
- Energy Star Products Program

#### **Commercial and Industrial Energy Efficiency Programs:**

- C&I Construction Program – Energy Efficient Construction Program
- C&I Construction Program – Combined Heat and Power (CHP) Program

#### **Renewable Energy Programs:**

- Customer On-Site Renewable Energy

Information on these programs is available at the OCE web site [www.njcleanenergy.com](http://www.njcleanenergy.com)

### **1.2.1 DESCRIPTION OF THE OCE AND NJCEP**

The OCE is dedicated to making New Jersey a clean energy leader through the advancement and use of energy efficient and renewable energy technologies. New Jersey's Clean Energy Program (NJCEP) is a Statewide program designed to help all classes of ratepayers reduce energy use, lower costs and protect the environment. NJCEP is administered by the OCE. It provides education, information, and financial incentives for renewable energy systems and energy

efficiency measures including combined heat and power generation. Funding is provided through the Societal Benefits Charge (SBC), which is paid by customers of the State's Utilities, and includes contributions to a "Clean Energy Public Trust Fund". BPU established the OCE to administer this fund.

BPU ordered that a total of \$745 million be collected in the years 2005 through 2008 to fund NJCEP. The administrative budget for OCE represents approximately ten percent (10%) of the total available funds and includes funds to support evaluation activities.

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48: 3-49 et seq. (EDECA or Act) required that within four (4) months of its effective date, and every four (4) years thereafter, the BPU shall initiate a comprehensive resource analysis (CRA) of energy programs and determine funding for energy efficiency and Class 1 renewable energy programs. EDECA requires that energy efficiency and renewable energy programs be funded for a minimum of eight (8) years and sets out a minimum funding level.

By Order dated March 9, 2001, Docket Nos. EX99050347 et al., BPU issued its first CRA decision that addressed program administration, program funding levels and programs to be funded for the first four years. That Order established an overall Statewide funding level of \$358.452 million for the years 2001 through 2003. The Order also approved specific programs and program budgets to be funded. By Order dated July 27, 2004, Docket No. EX03110945 et al., the BPU established a 2004 funding level of \$124.126 million.

By Order dated January 22, 2003, Docket No. EX99050347 et al., the BPU established the New Jersey Clean Energy Council (CEC) to advise the BPU on matters related to NJCEP. Over the course of 2003, the CEC considered various issues related to the administrative structure of NJCEP. The CEC submitted its initial recommendations to the BPU in a report dated July 21, 2003.

By Order dated September 11, 2003, Docket No. EO02120955, the BPU adopted the recommendations set out in the report of the CEC. The BPU directed the OCE to assume the role of administrator of NJCEP after an adequate transition period and to establish a fiscal agent (FA) to administer program funds.

Most of the energy efficiency programs (those being the Residential Energy Efficiency Programs and the Commercial and Industrial Energy Efficiency Programs) are currently managed and delivered by the Utilities while the renewable energy programs are managed and delivered by the OCE. The OCE released RFPs to hire market managers to manage and deliver the energy efficiency and renewable energy programs in August 2005. The transition of program management from the Utilities to the selected market managers is expected in 2006.

The CEC provides the BPU with recommendations regarding programs and program budgets on an annual basis. In addition, high level review and input regarding evaluation activities are also provided. The OCE manages the renewable programs and provides direct oversight of the programs managed by other entities that currently include the Utilities, the New Jersey Economic Development Authority (EDA), the New Jersey Department of Environmental Protection (DEP) and the New Jersey Department of Consumer Affairs (DCA).

The BPU initiated the second CRA proceeding in May of 2004. By Order dated December 23, 2004, Docket No. EX04040276, the BPU approved the funding levels for the years 2005 through 2008 and determined 2005 programs and budgets. The BPU established a four (4) year funding level of \$745 million for energy efficiency and renewable energy.

Rutgers University's Center for Energy, Economic and Environmental Policy (CEEPP) has been engaged by the BPU to manage and in some cases conduct evaluations of activities funded by NJCEP. CEEPP will assist in the evaluation of proposals submitted in accordance with this RFP and will perform the duties of BPU Contract Manager as set out in Section 8.0 below.

The impact evaluation will build upon other evaluations recently completed or currently underway. These studies are available at:

[http://njcleanenergy.com/html/5library/nj\\_baseline\\_studies.html](http://njcleanenergy.com/html/5library/nj_baseline_studies.html) or,  
<http://www.state.nj.us/bpu/cleanEnergy/cleanEnergyProg.shtml>

## 1.2.2 EVALUATION AND RESEARCH OF PROGRAMS

The two primary purposes for conducting evaluations and research regarding energy efficiency and renewable energy programs are: 1) to reliably document program effects, and 2) to recommend changes in program designs and operations to make them more effective at meeting energy savings or other program goals. Evaluation and research activities are intended to provide a continuous feedback loop to policymakers, program administrators and program managers. The evaluation and research activities will supplement various evaluations recently performed or currently underway.

Program evaluation and related research is best done systematically in steps over several years. Periodic evaluations are vital to track progress and improve and adjust program designs to meet targeted objectives. In addition to achieving energy savings and renewable energy generation, many programs are intended to reduce barriers to the penetration of new technologies.

The chief goal of evaluation is to objectively study the qualitative and quantitative effects of the programs. *Qualitative effects* involve customers' awareness and understanding of the benefits of the programs and the energy efficiency and renewable energy technologies. They also include: 1) assessments of the program's design and implementation; 2) barriers that limit program performance; 3) changes to codes and standards, and 4) other actions that signify progress towards the programs goals.

*Quantitative effects* include the measurable reductions of kW, kWh and therm demand that are the result of efficiency improvements and renewable energy generation that can be attributed to the OCE programs. The focus of this RFP is related to these evaluation tasks.

Evaluation of programs also includes the use of performance indicators. *Performance indicators* include measures specifically designed to monitor progress towards the goals of market transformation. Performance indicators for market transformation programs evolve over time and are developed to reflect progression, beginning with indicators of awareness. As the programs evolve, understanding and behavioral change should also be assessed.

The OCE recently engaged Summit Blue to perform an assessment of the energy efficiency programs. The primary objectives of this ongoing evaluation are to:

- Update baseline studies and estimates used as performance indicators.
- Assess the energy efficiency markets building upon recent market potential studies.
- Provide recommendations supported by studies and analysis regarding the future direction of the programs such as modifying the portfolio of programs, modifying rebate levels, adding or removing technologies eligible for rebates or increasing the minimum efficiencies to be eligible for rebates.

The OCE anticipates that a contractor will be engaged in the near future to perform a similar assessment of the renewable energy marketplace.

### **1.3 KEY EVENTS**

#### **1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD**

The Purchase Bureau will accept questions and inquiries from all potential bidders electronically via web form. To submit a question, please go to Current Bid Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders are not to contact the Using Agency directly, in person, by telephone or by email, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Purchase Bureau website after the cut-off date (see Section 1.4.1. of this RFP for further information.)

#### **1.3.2 SUBMISSION OF BID PROPOSAL**

In order to be considered for award, the bid proposal must be received by the Purchase Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY BID PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME IS INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

**BID RECEIVING ROOM - 9TH FLOOR  
PURCHASE BUREAU  
DIVISION OF PURCHASE AND PROPERTY  
DEPARTMENT OF THE TREASURY  
33 WEST STATE STREET, P.O. BOX 230  
TRENTON, NJ 08625-0230**

**Directions to the Purchase Bureau can be found at the following web address:**  
<http://www.state.nj.us/treasury/purchase/directions.shtml>

**Note: Bidders using USPS Regular or Express mail services should allow additional time since USPS mail deliveries are not delivered directly to the Purchase Bureau.**

#### **1.3.3 MANDATORY SITE VISIT**

Not applicable

#### **1.3.4 MANDATORY PRE-BID CONFERENCE**

Not applicable



### **1.3.5 DOCUMENT REVIEW**

The following are publicly available documents that bidders should review:

- NJCEP information is available online at [www.njcleanenergy.com](http://www.njcleanenergy.com)
- Additional information related to OCE, State policies and program governance can be found at the BPU website, <http://www.bpu.state.nj.us>

The BPU has posted relevant materials to the NJCEP website to provide bidders with the opportunity to review supplemental materials relevant to this procurement. The NJCEP website provides bidders access to information that may be needed to prepare and submit accurate and comprehensive proposals. Such review, while recommended, is not mandatory.

### **1.4 ADDITIONAL INFORMATION**

#### **1.4.1 ADDENDA: REVISIONS TO THIS RFP**

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

**ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, SELECT THE BID NUMBER ON THE BIDDING OPPORTUNITIES WEB PAGE AT THE FOLLOWING ADDRESS:**

**[HTTP://WWW.STATE.NJ.US/TREASURY/PURCHASE/BID/SUMMARY/BID.SHTML.](http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml)**

**There are no designated dates for release of addenda. Therefore interested bidders should check the Purchase Bureau "Bidding Opportunities" website on a daily basis from time of RFP issuance through bid opening.**

**It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.**

#### **1.4.2 BIDDER RESPONSIBILITY**

The bidder assumes sole responsibility for the complete effort required in submitting a bid proposal in response to this RFP. No special consideration will be given after bid proposals are opened because of a bidder's failure to be knowledgeable as to all of the requirements of this RFP.

#### **1.4.3 COST LIABILITY**

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a bid proposal in response to this RFP.

#### **1.4.4 CONTENTS OF BID PROPOSAL**

Subsequent to the issuance of the Notice of Intent to Award, all information submitted by bidders in response to the bid solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the common law and N.J.A.C. 14:1-12.1 et seq. Because the State proposes to negotiate and/or pursue a Best and Final Offer, bid proposals will not be made public until the Letter of Intent to Award is issued.

A bidder may designate specific information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The State reserves the right to make the determination and will advise the bidder accordingly. The location in the bid proposal of any such designation should be clearly stated in a cover letter. **The State will not honor any attempt by a bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.**

#### **1.4.5 BID OPENING**

On the date and time bid proposals are due under the RFP, only the names of the bidders submitting bid proposals will be publicly announced. The contents of the bid proposals shall remain confidential until the Notice of Intent to Award is issued by the Director.

#### **1.4.6 PRICE ALTERATION**

Bid prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the bidder.

#### **1.4.7 JOINT VENTURE**

If a joint venture is submitting a bid proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's bid proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder, Affirmative Action Employee Information Report, MacBride Principles Certification, and Business Registration or Interim Registration must be supplied for each party to a joint venture.

## 2.0 DEFINITIONS

### 2.1 GENERAL DEFINITIONS

The following definitions will be part of any contract awarded or order placed as result of this RFP.

**Addendum** – Written clarification or revision to this RFP issued by the Purchase Bureau.

**All-Inclusive Hourly Rate** – An hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

**Amendment** – A change in the scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Director, Division of Purchase and Property.

**Bidder** – An individual or business entity submitting a bid proposal in response to this RFP.

**Contract** – This RFP, any addendum to this RFP, and the bidder's proposal submitted in response to this RFP, as accepted by the State.

**Contractor** – The bidder awarded a contract resulting from this RFP. Also referred to as the Implementation Contractor.

**Director** – Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

**Division** – The Division of Purchase and Property

**Evaluation Committee** – A committee established by the Director to review and evaluate bid proposals submitted in response to this RFP and to recommend a contract award to the Director.

**Firm Fixed Price** – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the scope of work.

**Joint Venture** – A business undertaking by two or more entities to share risk and responsibility for a specific project.

**May** – Denotes that which is permissible, not mandatory.

**Project** – The undertaking or services that are the subject of this RFP.

**Request for Proposal (RFP)** – This document which establishes the bidding and contract requirements and solicits bid proposals to meet the purchase needs of the using Agencies as identified herein.

**Shall or Must** – Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a bid proposal as materially non-responsive.

**Should** – Denotes that which is recommended, not mandatory.

**Subtasks** – Detailed activities that comprise the actual performance of a task.

**State** – State of New Jersey.

**Subcontractor** – An entity having an arrangement with a State contractor, where the State contractor uses the products and/or services of that entity to fulfill some of its obligations under its State contract, while retaining full responsibility for the performance of all of its [the contractor's] obligations under the contract, including payment to the subcontractor. The subcontractor has no legal relationship with the State, only with the contractor.

**Task** – A discrete unit of work to be performed.

**Using Agency[ies]** – The entity[ies] for which the Division has issued this RFP and will enter into a contract.

## **2.2 CONTRACT SPECIFIC DEFINITIONS**

**2005 Program Plan** – Plan that provides the descriptions of the Clean Energy Programs as being implemented in 2005 and 2006.

**Board, BPU** – The Commissioners of the New Jersey Board of Public Utilities.

**BPU Contract Manager** – Individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work as set forth in Section 8.0.

**C&I Construction Program** – Program that provides incentives for commercial and industrial customers to install high efficiency lighting and equipment and to design, and construct both new and retrofit energy efficient buildings.

**Center for Energy, Economic & Environmental Policy (CEEPP)** – An entity within Rutgers University's Edward J. Bloustein School of Planning and Public Policy engaged by the Board to manage the NJ Clean Energy Program evaluation and research efforts.

**Clean Energy Council (CEC)** – The New Jersey Clean Energy Council, established in the Board's Order of January 22, 2003 provides recommendations to the Board concerning the Clean Energy Program. The CEC consists of representatives of government entities, academia, private firms and public interest groups.

**Clean Energy Program (CEP)** – Established in the Board Order dated December 22, 2003, the New Jersey Board of Public Utilities program for advancing and promoting energy efficiency and renewable energy programs. The program is designed to provide environmental, economic and energy benefits to New Jersey. The program developed from the Comprehensive Resource Assessment (CRA) referenced below.

**Commercial and Industrial (C&I) Energy Efficiency Program** – Any NJCEP that targets commercial and industrial customers of the State's investor owned electric and natural gas utilities.

**Compliance Filing** – Program plan that the Board may require from program managers which the Board or the OCE may accept in full, with modifications or may reject.

**Consortium for Energy Efficiency (CEE)** – Nonprofit public benefits corporation that develops national initiatives to promote the manufacture and purchase of energy-efficient products and services.

**CRA** – Comprehensive Resource Analysis (CRA) of energy programs required by N.J.S.A. 48:3-60a(3) which directed the Board to establish funding for energy efficiency and Class 1 renewable energy programs. The programs are administered by OCE. The programs are funded by the Societal Benefits Charge.

**Custom Measure** – C&I rebates available for energy efficiency measures not otherwise eligible as a prescriptive measure. Rebates for custom measures are calculated on a case-by-case basis.

**Customer On-site Renewable Energy Program (CORE)** – Program that provides rebates to customers that install eligible renewable energy systems that supply electricity to their home or business.

**DEP** – The New Jersey Department of Environmental Protection.

**DSM** - Demand-side Management.

**EDA** – The New Jersey Economic Development Authority.

**Electric Discount and Energy Competition Act or “EDECA”** - The New Jersey State legislation found at N.J.S.A. 48:3-49, et seq. EDECA established requirements to advance energy efficiency and renewable energy in New Jersey through the Societal Benefits Charge in accordance with N.J.S.A. 48:3-60a (3).

**Energy** - Electric energy measured in kilowatt hours (kWh) or natural gas energy measured in therms.

**Energy Star Products Program** – Program that provides customers, retailers, distributors and manufacturers with incentives to manufacture, distribute, buy and sell Energy Star products.

**Free Drivers** - Non-participants who adopted a particular efficiency measure or practice as a result of the program.

**Free Riders** - Program participants who would have implemented the program measure or practice in the absence of the program.

**Incentive** – Rebates, payments to customers for design support or technical support.

**KW** – Kilowatt; a measure of electric capacity. A Kilowatt is unit of power equal to one thousand watts.

**KWh** – Kilowatt-hour; a measure of electric usage. A unit of electric power consumption indicating the total energy developed by a power of one kilowatt acting for one hour (see KW).

**Market Development** – Increased availability and delivery of products and services to consumers such that these products and services are more broadly available at appropriate price, quality and quantity.

**Market Transformation** – Market transformation is achieved when the energy efficiency goals of NJCEP are reached such that the purchase of an energy efficiency technology becomes the standard purchasing practice in New Jersey without the need for rebates or incentives.

**MOA** – The Memorandum of Agreement executed May 5, 2004 with Addendum No. 1 among the OCE and the seven (7) electric and gas public utilities of the State of New Jersey.

**MW** – Megawatt; a measure of electric capacity. A Megawatt is a unit of power equal to one million watts.

**NJ Clean Energy Trust Fund** – Trust Fund established for funds collected by the electric and gas utilities (see Societal Benefits Charge) managed by New Jersey Department of the Treasury, Division of Administration, Office of Fiscal and Resources.

**Office of Clean Energy (OCE or NJOCE)** – The New Jersey Board of Public Utilities, Office of Clean Energy.

**Prescriptive Measures** – Prescriptive measures include all measures for which a specific rebate level is identified in the program description.

**Program Managers** – Contractors responsible for the function of managing and implementing Clean Energy Programs.

**Rebate** – Payment to a customer that installs qualified energy efficiency or renewable energy measures.

**Renewable Energy Business Financing Program** – Program that provides recoverable grants for research, business development and technology demonstrations that advance the delivery of renewable energy systems to the marketplace.

**Renewable Energy Program** – Any New Jersey Clean Energy Program that provides incentives for the installation of facilities that generate electricity using renewable resources or promotes the development of a New Jersey-based renewable energy business.

**Renewable Energy Projects Grants and Financing Program** – Program that provides grants and financing to large scale grid connected renewable energy projects.

**Residential Energy Efficiency Program** – Program that targets residential customers of the State's investor owned electric and natural gas utilities.

**Residential HVAC Program** – Program that provides residential customers with incentives to purchase high efficiency heating and air conditioning equipment.

**Residential New Construction Program** – Program that provides builders with incentives to construct new homes that meet New Jersey Energy Star Home standards

**Societal Benefits Charge** – In accordance with N.J.S.A. 48:3-60(a)(3) et seq., each electric and gas public utility collects funding money through a societal benefits charge ("SBC"). The SBC is a non-bypassable distribution charge imposed on all electric and gas utility customers in accordance with N.J.S.A. 48:3-60(a)(3) et seq.

**Supplier** – Company or individual that supplies products or services used by NJCEP.

**T&D** - Transmission and distribution.

**Therm** – Measure of natural gas usage equal to 100,000 BTU's.

### **3.0 SCOPE OF WORK**

The contractor shall evaluate and assess the impacts of the energy efficiency and renewable energy programs and compile all the findings developed under this contract into one Impact Evaluation Report. As programs are evaluated, the contractor shall develop recommendations regarding modifications or updates to protocols that will be used in the future. It is anticipated that the project may require twelve (12) months of metered information for certain technologies. It is the intent of this RFP that all work be completed within fourteen (14) months of contract award.

#### **3.0.1 GOALS AND OBJECTIVES**

Energy impact evaluations have not been performed for most NJCEP programs in more than four (4) years. Over that time, technologies, codes, standards, practices and other factors which could impact energy savings and renewable energy generation estimates have changed.

The primary objectives of this impact evaluation of the programs are:

- a) to provide an assessment of the impact the programs are having on reducing total energy demand through increased use of energy efficiency technologies or increasing renewable energy generation. The selected contractor shall review the current protocols, recent evaluation activities and evaluation activities of other states or regions and determine where additional evaluation or research is necessary to update the protocols.

The contractor will be expected to perform the evaluation in accordance with the most recent protocols approved by the BPU which are available on the BPU's web site at:

[http://www.state.nj.us/bpu/wwwroot/cleanEnergy/EO04080894\\_20041223.pdf](http://www.state.nj.us/bpu/wwwroot/cleanEnergy/EO04080894_20041223.pdf)

- b) to assess the net and gross impacts of the programs.
- c) to assess the persistence of energy savings
- d) to assess the seasonal and peak/off-peak impacts of the programs.
- e) to provide recommendations regarding updates or modifications to the protocols.

#### **3.1 PROJECT CONTROL**

The contractor shall report directly to the BPU Contract Manager. All written and oral communications shall be through the BPU Contract Manager. If a situation is urgent, the BPU Contract Manager shall be notified immediately. The contractor may be requested to discuss the evaluation progress with the BPU Contract Manager, as necessary. The BPU Contract Manager reserves the right to appoint key individuals within the BPU to act in the BPU Contract Manager's absence.

##### **3.1.1 BPU CONTRACT MANAGER AND CEEEP**

On behalf of the BPU, CEEEP members will make themselves available to the contractor through meetings and conference calls to assist in the fulfillment of this project. The BPU Contract Manager shall coordinate with CEEEP and provide:

- Review and feedback on the contractor's proposed approach and methodologies
- Review and approval of proposed Approach to Evaluation Report (Work Plan)
- Assistance with identifying sources of information and gathering information as required
- Contacts for and coordination with Program Managers if needed
- Review and feedback on draft reports

### **3.2 KICK-OFF MEETING**

Within five (5) business days following contract award, the contractor, the OCE and CEEEP will meet to discuss all aspects of the contract. The contractor's project manager shall attend as well as any other key staff from the contractor as deemed necessary by the OCE. All aspects of the contractor's approach to collecting and evaluating data will be discussed at the kick-off meeting. At the kickoff meeting, a regular schedule for reporting contractor activities (monthly) will be discussed and agreed upon. The contractor shall submit a summary report of the kickoff meeting (minutes) within five (5) business days of the kickoff meeting.

### **3.3 APPROACH TO EVALUATION REPORT (WORK PLAN)**

The Approach to Evaluation Report is the Work Plan for this contract. Within fifteen (15) business days following the kick-off meeting, the contractor shall prepare and submit a draft Work Plan. The content of this Work Plan shall mirror the information provided in the bid proposal, modified to reflect any adjustments discussed in the kick-off meeting. In this Work Plan, the contractor shall identify the approach, methods, and associated milestones necessary to complete each of the evaluation tasks set out in the Scope of Work. The OCE is interested in receiving recommendations as soon as practicable. Therefore, the contractor shall propose a Work Plan that provides results as available.

The information collected will be used to better understand the opportunities for enhancing program performance. In the Work Plan, the contractor shall describe its approach to coordinate the data collection needs to meet the objectives of the overall assessment.

In the draft Work Plan, the contractor shall describe its approach to conducting weekly status communications. The contractor and the BPU Contract Manager shall communicate on a weekly basis for the duration of the contract using an agreed upon method. The purpose of the status communication is for the contractor to update the BPU Contract Manager on the progress of work. It is anticipated that weekly communication will take one hour or less.

At any time during the course of this contract, the contractor may be required to attend meetings at Rutgers or the BPU in either Trenton or Newark. These may be informal meetings or formal presentations to the BPU staff, the Board or members of the public. All travel to and from these meetings shall be considered part of the contract price and the contractor shall not be paid separately for travel. The contractor shall provide any status reports, deliverables or other material needed for any meeting. The contractor shall prepare minutes of the meeting and provide those minutes to the BPU Contract Manager and attendees at the meeting within five (5) business days of the meeting.

The Work Plan shall include a schedule with milestones and times for the completion of work and deliverables preferably within fourteen (14) months of contract award. For each milestone, the contractor shall include a note as to the percentage of all work that will be completed when the milestone is completed. The contractor shall include a discussion on how it estimated the percentage of work completed at each milestone. Once approved by the BPU Contract Manager, the schedule shall be contractually binding and the contractor shall meet that schedule or seek formal approval from the BPU Contract Manager should the schedule need to be modified.

The draft Work Plan shall be reviewed by the BPU Contract Manager. When approved, the contractor shall submit a final Work Plan. The contractor shall complete all work within the time schedule specified in the final Work Plan. There is no guarantee that work specified in a bid proposal or proposed in the draft Work Plan will be approved by the BPU Contract Manager. The



contractor and the BPU Contract Manager may discuss the updating of the Work Plan during the weekly status communications or as mutually agreed upon.

### **3.4 MONTHLY PROGRESS REPORT**

The contractor shall submit a monthly written report to the BPU Contract Manager for any month in which work was performed. The report shall consist of a general narrative providing adequate and detailed information regarding the status of the evaluation with an explanation of any discrepancies between the approved work plan and actual progress.

### **3.5 INTERMITTENT CONFERENCES**

The contractor shall attend meetings to discuss any and all pertinent items as requested by the BPU.

### **3.6 COORDINATE WITH OTHER STATE, NATIONAL AND REGIONAL EVALUATION ACTIVITIES**

Several organizations, such as the Consortium for Energy Efficiency, the Northeast Energy Efficiency Partnership, Clean Power Markets, Inc., and the EPA, have performed or are performing regional/national evaluations that may be relevant to the work of this contract. Other states may have performed similar evaluations as well. The contractor shall survey other organizations and states to determine if those organizations have or are collecting data relevant to this contract, utilize any authoritative and reliable data collected from those organizations and coordinate the information gathering performed under this contract with efforts of the other organizations and states in such a way to minimize the duplication of effort.

### **3.7 REVIEW PREVIOUS STUDIES**

The impact evaluation will update and build upon previous studies that address NJ markets. The impact evaluation contractor will also be expected to coordinate with Summit Blue Consulting which is currently performing research that may impact certain inputs and assumptions included in the protocols such as updating baselines. The evaluation studies that were performed to support many of the existing programs are available at:

[http://njcleanenergy.com/html/5library/nj\\_baseline\\_studies.html](http://njcleanenergy.com/html/5library/nj_baseline_studies.html) or,  
<http://www.state.nj.us/bpu/cleanEnergy/cleanEnergyProg.shtml>

The Office of Clean Energy also anticipates that a contractor will be engaged to perform a market assessment of the renewable energy marketplace. The selected contractor shall coordinate with this effort as well.

The contractor shall review any reports prepared by Clean Power Markets, Inc. related to the output of renewable energy systems that may be relevant to this study. The contractor shall determine whether field measurements performed by Clean Power Markets are sufficient or whether additional direct measurement of renewable energy systems located in New Jersey are required.

### **3.8 EVALUATION METHODOLOGIES**

Energy impact evaluations use several methods to obtain results such as billing data analysis, metering, simulation modeling, engineering estimates, and on-site observations. Generally, more than one methodology is used to assess program impacts and the results are compared or used as upper and lower bounds for planning purposes.

The contractor shall review the programs and protocols and propose which methods it believes are most appropriate for each of the programs and/or measures.

### **3.9 IMPACT EVALUATION**

The contractor shall perform an impact evaluation for the following programs:

#### **Residential Energy Efficiency Programs:**

1. Residential Electric and Gas HVAC Program
2. Residential New Construction (RNC) Program
3. Energy Star Products Program

#### **Commercial and Industrial Energy Efficiency Program:**

1. C&I Construction Program – Energy Efficient Construction Program
2. C&I Construction Program – Combined Heat and Power (CHP) Program

#### **Renewable Energy Efficiency Program:**

1. Customer On-Site Renewable Energy Program

The energy impact evaluation will support measurement of energy savings and renewable energy generation, the amount and distribution of savings and generation, and appropriateness and comprehensiveness of measures. Comprehensive protocols have been approved by the Board and are used in New Jersey to track and report energy savings and renewable energy generation on a prospective basis. The protocols use measured and customer data as input values in industry accepted algorithms. The data and input values for the protocol algorithms come from the program application forms and tracking systems, or from standard values. The protocols are available at:

[http://www.state.nj.us/bpu/wwwroot/cleanEnergy/EO04080894\\_20041223.pdf](http://www.state.nj.us/bpu/wwwroot/cleanEnergy/EO04080894_20041223.pdf)

The standard input values are based on the best available measured data from prior studies or industry data applicable to New Jersey programs. The energy savings or generation evaluation activities described in this RFP will support the protocols by assessing key data and input values to either confirm or update current values going forward. The level of required impact evaluation will vary across programs.

Protocols document the processes for measuring the quantitative results and energy impacts of programs. While evaluation activities are required to support market effect inputs to the protocols, additional work is required to update demand, load shape, and energy usage effects. This should be done on a case-by-case (by program or measure) basis as needed.

Energy impact evaluations should address the following issues:

**Measurement versus Estimation:** How close are actual program impacts to engineering estimates at the measure, building, and program level?

**Appropriateness of Measures:** What costs and savings can be expected from certain measures in specific settings?

**Amount and Distribution of Savings or Clean Energy Generation:** What are the savings or generation at different times of the year or during peak and off-peak periods? Do the savings vary within the State? How do they vary regionally? Are they persistent?

The contractor shall review the existing programs and protocols and identify specific programs, measures or protocol inputs that require updating. The contractor shall propose methods for updating the protocols or inputs that may include any of the methods identified above or utilization of information from recent evaluations performed in other states or regions to the extent that is applicable to New Jersey.

A new program, Home Performance with Energy Star, is under development, and a CHP Program was recently implemented. Protocols for these programs have yet to be developed. The contractor shall assist the Office of Clean Energy in developing prospective protocols and inputs for these programs.

### **3.10 NET SAVINGS**

Gross savings are calculated for program participants relative to their prior usage or to an established baseline. Net savings are the savings that would have occurred for these participants over the same period whether the program was offered or not. The existing protocols assume that the net of Free Riders and Free Drivers is zero in the counting of units from direct program participants. The protocols do not adjust savings estimates for any other effects.

The Office of Clean Energy is interested in obtaining additional research regarding whether netting free riders and free drivers continues to be appropriate and whether other adjustments to energy savings or renewable energy generation estimates should be incorporated into the protocols. For example, the energy savings estimates from a customer that installs a high efficiency furnace should be reduced if the customer responds to lower energy costs by raising the thermostat thereby “taking back” some of the savings. Potential adjustments that should be researched include but are not limited to factors such as spillover and rebound effects.

The contractor shall perform research as noted above and provide recommendations regarding any adjustments to energy saving and renewable energy generation calculations that should be incorporated into the protocols. In addition, the contractor shall provide a summary of the methodologies for calculating net and gross savings used in other states. The summary and recommendations shall be included in the Impact Evaluation Report.

The contractor shall provide the OCE and CEEEP with electronic files that contain the data collected and used to develop the Impact Evaluation Report.

### **3.11 DRAFT REPORT**

A draft of the final evaluation report including a summary of the evaluation process and all recommendations shall be submitted in accordance with the contract schedule.

### **3.12 EXIT CONFERENCE**

Upon completion of the evaluation and submission of the draft report and prior to submission of the final report, the contractor shall meet with the BPU to discuss evaluation findings. The draft report shall be reviewed and approved by the BPU Contract Manager. The contractor shall incorporate adjustments and changes from the BPU Contract Manager’s comments when preparing the final report.

### **3.13 FINAL REPORT**

The contractor shall compile all the final reports developed under this contract into one Impact Evaluation Report. In addition, the contractor shall prepare and insert an executive summary of the findings and conclusions in the Impact Evaluation Report. The delivery of this final Impact

Evaluation Report shall include at least one appearance and discussion with the OCE staff and one presentation of the findings to the Clean Energy Council.

The Impact Evaluation Report and any technical appendices shall fully document the evaluation results, providing all sources, inputs and calculations used to develop the report. The contractor shall also provide electronic files to the OCE and CEEEP that contain the data collected and used to develop the Impact Evaluation Report.

The contractor shall provide 15 bound copies, one unbound master photocopy and one electronic copy on CD-ROM of the final report to the BPU Contract Manager within ten (10) business days of draft report approval. The final report shall be released only upon authorization from the BPU and the BPU Contract Manager. The CD must be in PDF file format to be viewable using Adobe Acrobat Reader software.

## 4.0 BID PROPOSAL PREPARATION AND SUBMISSION

### 4.1 GENERAL

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its bid proposal.

### 4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a bid proposal must arrive at the Purchase Bureau in accordance with the instructions on the RFP signatory page <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of bid proposals. **State regulation mandates that late bid proposals are ineligible for consideration. THE EXTERIOR OF ALL BID PROPOSAL PACKAGES ARE TO BE LABELED WITH THE BID IDENTIFICATION NUMBER AND THE FINAL BID OPENING DATE OR RISK NOT BEING RECEIVED IN TIME.**

### 4.3 NUMBER OF BID PROPOSAL COPIES

The bidder must submit **one (1) complete ORIGINAL bid proposal**, clearly marked as the "ORIGINAL" bid proposal. The bidder should submit **ten (10) full, complete and exact copies** of the original. The copies requested are necessary in the evaluation of the bid proposal. A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. It is suggested that the bidder make and retain a copy of its bid proposal.

### 4.4 BID PROPOSAL CONTENT

The bid proposal should be submitted in one volume and that volume divided into four (4) sections with tabs (separators), and the content of the material located behind each tab, as follows:

- Section 1 - Forms ([Section 4.4.1 - 4.4.3.](#))
- Section 2 - Technical Proposal ([Section 4.4.4](#))
- Section 3 - Organizational Support and Experience ([Section 4.4.5](#))
- Section 4 - Cost Proposal ([Section 4.4.6](#))

#### 4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL

##### 4.4.1.1 SIGNATORY PAGE

The bidder shall complete and submit the Signatory page provided on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>. The Signatory page shall be signed by an authorized representative of the bidder. If the bidder is a limited partnership, the Signatory page must be signed by a general partner. If the bidder is a joint venture, the Signatory page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the bid proposal.

##### 4.4.1.2 OWNERSHIP DISCLOSURE FORM

In the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure

Form must be received prior to or accompany the bid proposal. Failure to do so will preclude the award of a contract.

The Ownership Disclosure Form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>.

#### **4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER**

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>.

#### **4.4.1.4 NOTICE OF INTENT TO SUBCONTRACT FORM**

All bidders shall complete the attached Notice of Intent to Subcontract Form <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml> to advise the State as to whether or not a subcontractor will be utilized to provide any goods or services under the contract. If this is a Small Business Subcontracting set-aside contract, the bidder must comply with the Procedures for Small Business Participation as Subcontractors set forth in <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>.

#### **4.4.1.5 SUBCONTRACTOR UTILIZATION FORM**

If the bidder intends to utilize a subcontractor, the Subcontractor Utilization Form <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml> must be completed and submitted with the bid proposal.

#### **4.4.2 PROOF OF REGISTRATIONS THAT MUST BE SUBMITTED WITH THE BID PROPOSAL**

##### **4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE**

**FAILURE TO SUBMIT A COPY OF THE BIDDER'S BUSINESS REGISTRATION CERTIFICATE (OR INTERIM REGISTRATION) FROM THE DIVISION OF REVENUE WITH THE BID PROPOSAL MAY BE CAUSE FOR REJECTION OF THE BID PROPOSAL.**

The bidder may go to [www.nj.gov/njbgs](http://www.nj.gov/njbgs) to register with the New Jersey Division of Revenue or to obtain a copy of an existing Business Registration Certificate.

Refer to Section 1.1. of the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>

##### **4.4.2.2 SMALL BUSINESS SET-ASIDE CONTRACTS**

This is a contract with set aside subcontracting goals for Small Businesses. All bidders must include in their bid proposal a completed and signed **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>. Bidders intending to utilize subcontractors must also include a completed and signed Subcontractor Utilization Plan

form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>. Failure to submit the required forms shall result in a determination that the bid is materially non-responsive. Bidders seeking eligible small businesses should contact the New Jersey Commerce and Economic Growth Commission at (609) 292-2146.

#### **4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.**

##### **4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION**

The bidder is required to complete the attached MacBride Principles Certification evidencing compliance with the MacBride Principles. The requirement is a precondition to entering into a State contract. The MacBride Principles Certification Form is located on the Advertised Solicitation, Current Bid Opportunities webpage: <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>.

##### **4.4.3.2 AFFIRMATIVE ACTION**

The bidder is required to complete the attached Affirmative Action Employee Information Report, or, in the alternative, supply either a New Jersey Affirmative Action Certificate or evidence that the bidder is operating under a federally approved or sanctioned affirmative action program. The requirement is a precondition to entering into a State contract. The Affirmative Action Forms are located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>.

##### **4.4.3.3 SERVICES SOURCE DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:34-13.2, the bidder is required to submit with its bid proposal a completed source disclosure form. <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>. Refer to section 7.1.2 of this RFP.

#### **4.4.4 TECHNICAL PROPOSAL**

In this Section, the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work Section, i.e., Section 3.0. Bidders are strongly encouraged to review and become familiar with Board approved protocols prior to submitting bids and should discuss the protocols in the bid proposal. The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This Section of the bid proposal should contain at least the following information:

##### **4.4.4.1 MANAGEMENT OVERVIEW**

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative should convince the State that the bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract. This narrative should convince the State that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved.

Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder's ability to complete the contract. The bidder's response to this section should be designed to convince the State that the bidder's detailed plans and approach

proposed to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's bid proposal will lead to successful contract completion.

The bidder should provide a work plan to meet the requirements of Section 3 Scope of Work of this RFP. This work plan should be detailed enough that if awarded the contract, the work plan can be used as the basis for that required in Section 3.0.

#### **4.4.4.2 CONTRACT MANAGEMENT**

The bidder should describe its specific plans to manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule. The plan should include the bidder's approach to communicate with the BPU Contract Manager including, but not limited to, status meetings, status reports, etc.

#### **4.4.4.3 CONTRACT SCHEDULE**

The bidder should include a contract schedule. If key dates are a part of this RFP, the bidder's schedule should incorporate such key dates and should identify the completion date for each task and sub-task required by the Scope of Work. Such schedule should also identify the associated deliverable item(s) to be submitted as evidence of completion of each task and/or subtask.

The bidder should identify the contract scheduling and control methodology to be used and should provide the rationale for choosing such methodology. The use of Gantt, PERT or other charts is at the option of the bidder.

#### **4.4.4.4 MOBILIZATION AND IMPLEMENTATION PLAN**

The bidder must describe its ability to respond to and complete analyses within the timeframes specified in this RFP.

#### **4.4.4.5 POTENTIAL PROBLEMS**

The bidder should set forth a summary of any and all problems that the bidder anticipates during the term of the contract. For each problem identified, the bidder should provide its proposed solution.

#### **4.4.5 ORGANIZATIONAL SUPPORT AND EXPERIENCE**

The bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the bidder's qualifications, and capabilities to perform the services required by this RFP.

##### **4.4.5.1 LOCATION**

The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.

##### **4.4.5.2 ORGANIZATION CHART (CONTRACT SPECIFIC)**

The bidder should include a contract organization chart, with names showing management, supervisory and other key personnel (including sub-vendor's management, supervisory or other



key personnel) to be assigned to the contract. The chart should include the labor category and title of each such individual.

#### **4.4.5.3 RESUMES**

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should be structured to emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- Clearly identify the individual's previous experience in completing similar contracts.
- Beginning and ending dates should be given for each similar contract.
- A description of the contract should be given and should demonstrate how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP.
- With respect to each similar contract, the bidder should include the name and address of each reference together with a person to contact for a reference check and a telephone number.

#### **4.4.5.4 BACKUP STAFF**

The bidder should include a list of backup staff that may be called upon to assist or replace primary individuals assigned. Backup staff must be clearly identified as backup staff.

In the event the bidder must hire management, supervisory and/or key personnel if awarded the contract, the bidder should include, as part of its recruitment plan, a plan to secure backup staff in the event personnel initially recruited need assistance or need to be replaced during the contract term.

#### **4.4.5.5 ORGANIZATION CHART (ENTIRE FIRM)**

The bidder should include an organization chart showing the bidder's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the bidder's overall organizational structure.

#### **4.4.5.6 EXPERIENCE OF BIDDER ON CONTRACTS OF SIMILAR SIZE AND SCOPE**

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP. For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

#### **4.4.5.7 FINANCIAL CAPABILITY OF THE BIDDER**

In order to provide the State with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit certified financial statements to include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the

Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the bid proposal, the State may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the State may deem the proposal non-responsive.

A bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. Bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Bid Proposal.

The State reserves the right to make the determination to accept the assertion and shall so advise the bidder.

#### **4.4.5.8 SUBCONTRACTOR(S)**

- A. **All bidders** must complete the **Notice of Intent to Subcontract Form** whether or not they intend to utilize subcontractors in connection with the work set forth in this RFP. If the bidder intends to utilize subcontractor(s), then the **Subcontractor Utilization Plan** must also be submitted with the bid.

N.J.A.C. 17:13-4 and Executive Order 71 mandate that if the bidder proposes to utilize a subcontractor, the bidder must make a good faith effort to meet the set-aside subcontracting targets of awarding a total of twenty-five percent (25%) of the value of the contract to New Jersey-based, New Jersey Commerce, Economic Growth & Tourism Commission registered small businesses, with a minimum of five (5) percent awarded to each of the three categories set forth below, and the balance of ten (10) percent spread across the three annual gross revenue categories: Category I – \$1 to \$500,000; Category II - \$500,001 to \$5,000,000; Category III - \$5,000,001 to \$12,000,000.

- B. **Should the bidder choose to use subcontractors and fail to meet the Small Business Subcontracting targets set forth above, the bidder must submit documentation demonstrating its good faith effort to meet the targets with its bid proposal or within seven (7) business days upon request.**
- C. Should the bidder propose to utilize a subcontractor(s) to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's(s): (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- D. The bidder must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of this RFP.
- E. The bidder should provide detailed resumes for each subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is designated to perform.
- F. The bidder should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal.

#### **4.4.6 PRICE SCHEDULE**

The bidder must submit its pricing using the format set forth in the State supplied price sheet(s) attached to this RFP.

The bidder should submit a budget including labor titles and hourly rates for each labor title that supports and explains the firm fixed price submitted on its price schedule. The budget should include, but not be limited to, staff, estimated hours for each staff person and an all inclusive hourly rate for each staff person.

Failure to submit all requested pricing information may result in the bidder's proposal being considered materially non-responsive. Each bidder must hold its price(s) firm through issuance of contract to permit the completion of the evaluation of bid proposals received and the contract award process.

## **5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

### **5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

The contract awarded as a result of this RFP shall consist of this RFP, addendum to this RFP, the contractor's bid proposal and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>.

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and Conditions and the NJ Standard Terms and Conditions version 05 09 06, and any Addendum to this RFP, the Addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any Addendum to this RFP, and the bidder's bid proposal, the RFP and/or the Addendum shall govern.

### **5.2 CONTRACT TERM AND EXTENSION OPTION**

The term of the contract shall be for a period of **two (2) years**. The anticipated "Contract Effective Date" is provided on the signatory page of this RFP:

<http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract. The contract may be extended for all or part of **two (2)** one-year periods, by the mutual written consent of the contractor and the Director.

### **5.3 CONTRACT TRANSITION**

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than ninety (90) days beyond the expiration date of the contract.

### **5.4 CONTRACT AMENDMENT**

Any changes or modifications to the terms of the contract shall be valid only when they have been reduced to writing and signed by the contractor and the Director.

### **5.5 CONTRACTOR RESPONSIBILITIES**

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of

responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

#### **5.6 SUBSTITUTION OF STAFF**

If it becomes necessary for the contractor to substitute any management, supervisory or key personnel, the contractor will identify the substitute personnel and the work to be performed.

The contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitution(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The contractor shall forward a request to substitute staff to the BPU Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the contractor has received written approval to proceed from the BPU Contract Manager.

#### **5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)**

This Subsection serves to supplement but not to supersede Section 3.11 of the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage.

If it becomes necessary for the contractor to substitute a subcontractor, add a subcontractor or substitute its own staff for a subcontractor, the contractor will identify the proposed new subcontractor or staff member(s) and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution or addition.

The contractor must provide detailed resumes of its proposed replacement staff or of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is to undertake.

The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the contractor in its bid proposal.

The contractor shall forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the BPU Contract Manager for consideration. If the BPU Contract Manager approves the request, the BPU Contract Manager will forward the request to the Director for final approval.

No substituted or additional subcontractors are authorized to begin work until the contractor has received written approval from the Director.

#### **5.8 OWNERSHIP OF MATERIAL**

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to

software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e., the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, contractor or subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the bid proposal. Otherwise, the language in the first paragraph of this section prevails. If the bidder identifies such intellectual property ("Background IP") in its bid proposal, then the Background IP owned by the bidder on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the bidder. Upon contract award, the bidder or contractor shall grant the State a non-exclusive, perpetual royalty free license to use any of the bidder/contractor's Background IP delivered to the State for the purposes contemplated by the Contract.

## **5.9 DATA CONFIDENTIALITY**

All financial, statistical, personnel and/or technical data supplied by the State to the contractor are confidential. The contractor is required to use reasonable care to protect the confidentiality of such data. Any use, sale or offering of this data in any form by the contractor, or any individual or entity in the contractor's charge or employ, will be considered a violation of this contract and may result in contract termination and the contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

## **5.10 NEWS RELEASES**

The contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without the prior written consent of the Director.

## **5.11 ADVERTISING**

The contractor shall not use the State's name, logos, images, or any data or results arising from this contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

## **5.12 LICENSES AND PERMITS**

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply the BPU Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations must be considered by the bidder in its bid proposal.

## **5.13 CLAIMS AND REMEDIES**

### **5.13.1 CLAIMS**

All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

### **5.13.2 REMEDIES**

Nothing in the contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

### **5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS**

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State administrative code and/or authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor.

### **5.14 LATE DELIVERY**

The contractor must immediately advise the BPU Contract Manager of any circumstance or event that could result in late completion of any task or subtask called for to be completed on a date certain.

### **5.15 RETAINAGE**

Not applicable

### **5.16 STATE'S OPTION TO REDUCE SCOPE OF WORK**

The State has the option, in its sole discretion, to reduce the scope of work for any task or subtask called for under this contract. In such an event, the Director shall provide advance written notice to the contractor.

Upon receipt of such written notice, the contractor will submit, within five (5) working days to the Director and the BPU Contract Manager, an itemization of the work effort already completed by task or subtask. The contractor shall be compensated for such work effort according to the applicable portions of its price schedule.

### **5.17 SUSPENSION OF WORK**

The BPU Contract Manager may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order or upon such other date as the BPU Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

### **5.18 CHANGE IN LAW**

Whenever an unforeseen change in applicable law or regulation affects the services that are the subject of this contract, the contractor shall advise the BPU Contract Manager and the Director in writing and include in such written transmittal any estimated increase or decrease in the cost of its performance of the services as a result of such change in law or regulation. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

### **5.19 CONTRACT PRICE INCREASE (PREVAILING WAGE)**

If the Prevailing Wage Act (N.J.S.A. 34:11-56 et seq.) is applicable to the contract, the contractor may apply to the Director, on the anniversary of the effective date of the contract, for a contract price increase. The contract price increase will be available only for an increase in the prevailing wages of trades and occupations covered under this contract during the prior year. The contractor must substantiate with documentation the need for the increase and submit it to the Director for review and determination of the amount, if any, of the requested increase, which shall be available for the upcoming contract year. No retroactive increases will be approved by the Director.

### **5.20 ADDITIONAL WORK AND/OR SPECIAL PROJECTS**

The contractor shall not begin performing any additional work or special projects without first obtaining written approval from both the BPU Contract Manager and the Director.

In the event of additional work and/or special projects, the contractor must present a written proposal to perform the additional work to the BPU Contract Manager. The proposal should provide justification for the necessity of the additional work. The relationship between the additional work and the base contract work must be clearly established by the contractor in its proposal.

The contractor's written proposal must provide a detailed description of the work to be performed broken down by task and subtask. The proposal should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written proposal must detail the cost necessary to complete the additional work in a manner consistent with the contract. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the contractor in the contractor's original bid proposal submitted in response to this RFP. Whenever possible, the price schedule should be a firm, fixed cost to perform the required work. The firm fixed price should specifically reference and be tied directly to costs submitted by the contractor in its original bid proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the contractor's written proposal, the BPU Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted.

Documentation forwarded by the BPU Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget (OMB) and Office of Information and Technology (OIT).

No additional work and/or special project may commence without the Director's written approval. In the event the contractor proceeds with additional work and/or special projects without the Director's written approval, it shall be at the contractor's sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

### **5.21 FORM OF COMPENSATION AND PAYMENT**

This Section supplements Section 4.5 of the NJ Standard Terms and Conditions version 05 09 06, located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>. The contractor must submit official State invoice forms to the Using Agency with supporting documentation evidencing that work for which payment is sought has been satisfactorily completed. Invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict



accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the BPU Contract Manager before payment will be authorized.

Monthly payments will be a percentage of the total fixed price made in accordance with the schedule approved in [Section 3.3](#)

Note: In no event shall more than seventy-five (75%) percent of the total contract cost be paid to the contractor until the final report is complete, submitted to the BPU and accepted by the BPU.

In addition, primary contractors must provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business subcontractor(s). This breakdown shall be sent to the Purchase Bureau Business Unit, Set-Aside Coordinator.

Invoices must also be submitted for any special projects, additional work or other items properly authorized and satisfactorily completed under the contract. Invoices shall be submitted according to the payment schedule agreed upon when the work was authorized and approved. Payment can only be made for work when it has received all required written approvals and has been satisfactorily completed.

#### **5.21.1 PAYMENT TO CONTRACTOR - OPTIONAL METHOD**

Not Applicable

#### **5.22 MODIFICATIONS AND CHANGES TO THE NJ STANDARD TERMS AND CONDITIONS VERSION 05 09 06**

NJ Standard Terms and Conditions version 05 09 06 are located on the Advertised Solicitation, Current Bid Opportunities webpage  
<http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>

#### **5.22.1 PATENT AND COPYRIGHT INDEMNITY**

Section 2.1 of the NJ Standard Terms and Conditions version 05 09 06 is deleted and replaced with the following:

##### **2.1 Patent and Copyright Indemnity**

- a. The Contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract.
- b. The State of New Jersey agrees: (1) to promptly notify the Contractor in writing of such claim or suit; (2) that the Contractor shall have control of the defense of settlement of such claim or suit; and (3) to cooperate with the Contractor in the defense of such claim or suit, to the extent that the interests of the Contractor and the State are consistent.
- c. In the event of such claim or suit, the Contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

### **5.22.2 INDEMNIFICATION**

Section 2.2 of the NJ Standard Terms and Conditions version 05 09 06, is deleted and replaced with the following:

#### **2.2 Indemnification**

The contractor's liability to the State for actual, direct damages resulting from the contractor's performance or non-performance, or in any manner related to the contract, for any and all claims, shall be limited in the aggregate to 500 % of the value of the contract, except that such limitation of liability shall not apply to the following:

1. The contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the contractor under the contract caused by negligence or willful misconduct of the contractor;
2. The contractor's breach of its obligations of confidentiality; and,
3. Contractor's liability with respect to copyright indemnification.

The contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 2.3 of the NJ Standard Terms and Conditions version 05 09 06.

The contractor shall not be liable for special, consequential, or incidental damages.

### **5.22.3 INSURANCE - PROFESSIONAL LIABILITY INSURANCE**

Section 2.3 of the NJ Standard Terms and Conditions version 05 09 06 regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

d) Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

## **6.0 PROPOSAL EVALUATION/CONTRACT AWARD**

### **6.1 PROPOSAL EVALUATION COMMITTEE**

Bid proposals may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Purchase Bureau. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant in an advisory role.

### **6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL**

After the submission of bid proposals, unless requested by the State, contact with the State is limited to status inquiries only and such inquiries are only to be directed to the buyer. Any further contact or information about the proposal to the buyer or any other State official connected with the solicitation will be considered an impermissible supplementation of the bidder's bid proposal.

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its bid proposal. The Evaluation Committee may also require a bidder to submit written responses to questions regarding its bid proposal.

The purpose of such communication with a bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. Original bid proposals submitted, however, cannot be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Bidders may not attend presentations made by their competitors.

It is within the Evaluation Committee's discretion whether to require a bidder to give an oral presentation or require a bidder to submit written responses to questions regarding its bid proposal. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a bid proposal. The Purchase Bureau buyer will be the sole point of contact regarding any request for an oral presentation or clarification.

### **6.3 EVALUATION CRITERIA**

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate bid proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process:

#### **6.3.1 TECHNICAL EVALUATION CRITERIA**

- A) The bidder's general approach and plans in meeting the requirements of this RFP.
- B) The bidder's detailed approach and plans to perform the services required by the Scope of Work of this RFP.
- C) The bidder's documented experience in successfully completing contracts of a similar size and scope to the work required by this RFP.
- D) The qualifications and experience of the bidder's management, supervisory or other key personnel assigned to the contract, with emphasis on documented experience in

successfully completing work on contracts of similar size and scope to the work required by this RFP.

- E) The overall ability of the bidder to mobilize, undertake and successfully complete the contract. This judgment will include, but not be limited to, the following factors: the number and qualifications of management, supervisory and other staff proposed by the bidder to complete the contract, the availability and commitment to the contract of the bidder's management, supervisory and other staff proposed and the bidder's contract management plan, including the bidder's contract organizational chart.

### **6.3.2 BIDDER'S PRICE SCHEDULE**

For evaluation purposes, bidders will be ranked according to the total bid price located on the Price Sheet located on the Advertised Solicitation, Current Bid Opportunities webpage, <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>

### **6.3.3 BID DISCREPANCIES**

In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum of the column of figures.

### **6.3.4 EVALUATION OF THE BID PROPOSALS**

The Evaluation Committee will complete its evaluation and recommend to the Director for award the responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. The Evaluation Committee considers and weights price, technical criteria, and other factors during the evaluation process.

### **6.4 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)**

Following the opening of bid proposals, the State shall, pursuant to N.J.S.A. 52:34-12(f), negotiate one or more of the following contractual issues: the technical services offered, the terms and conditions and/or the price of a proposed contract award with any bidder, and/or solicit a Best and Final Offer (BAFO) from one or more bidders.

Initially, the Evaluation Committee will conduct a review of all the bids and select bidders to contact to negotiate and/or conduct a BAFO based on its evaluation and determination of the bid proposals that best satisfy the evaluation criteria and RFP requirements, and that are most advantageous to the State, price and other factors considered. The Committee may not contact all bidders to negotiate and/or to submit a BAFO.

In response to the State's request to negotiate, bidders must continue to satisfy all mandatory RFP requirements but may improve upon their original technical proposal in any revised technical proposal. However, any revised technical proposal that does not continue to satisfy all mandatory requirements will be rejected as non-responsive and the original technical proposal will be used for any further evaluation purposes in accordance with the following procedure.

In response to the State's request for a BAFO, bidders may submit a revised price proposal that is equal to or lower in price than their original submission, but must continue to satisfy all

mandatory requirements. Any revised price proposal that is higher in price than the original will be rejected as non-responsive and the original bid will be used for any further evaluation purposes.

After receipt of the results of the negotiation and/or the BAFO(s), the Evaluation Committee will complete its evaluation and recommend to the Director for award that responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for negotiation or BAFO, any revised technical and/or price proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

## **7.0 CONTRACT AWARD**

### **7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD**

#### **7.1.1 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134)**

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 – 25 on March 22, 2005 the “Legislation”), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFP:

##### **7.1.1.1 DEFINITIONS**

For the purpose of this section, the following shall be defined as follows:

a) Contribution – means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act.” P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

b) Business Entity – means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

##### **7.1.1.2 BREACH OF TERMS OF THE LEGISLATION**

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of the Legislation, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

### **7.1.1.3 CERTIFICATION AND DISCLOSURE REQUIREMENTS**

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

### **7.1.1.4 STATE TREASURER REVIEW**

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

### **7.1.1.5 ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 271**

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

## **7.1.2 SOURCE DISCLOSURE REQUIREMENTS**

### **7.1.2.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2**

Under the referenced statute, effective August 3, 2005, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

### **7.1.2.2 SOURCE DISCLOSURE REQUIREMENTS**

Pursuant to the statutory requirements, the intended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where services under the contract, including subcontracted services, will be performed. The Source Disclosure Certification form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x38683.shtml>.

### **FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE BIDDER.**

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the bidder to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

### **7.1.2.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129**

### **A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF CONTRACT.**

If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 3.5b.1 of the Standard Terms and Conditions version 05 09 06 of the RFP, unless previously approved by the Director and the Treasurer.

## **7.2 FINAL CONTRACT AWARD**

Contract award[s] shall be made with reasonable promptness by written notice to that responsible bidder(s), whose bid proposal(s), conforming to this RFP, is(are) most advantageous to the State, price, and other factors considered. Any or all bid proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

## **7.3 INSURANCE CERTIFICATES**

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured.

## **7.4 PERFORMANCE BOND**

Not Applicable



## **8.0 CONTRACT ADMINISTRATION**

### **8.1 CONTRACT MANAGER**

The BPU Contract Manager is the State employee responsible for the overall management and administration of the contract.

The BPU Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the BPU Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and email address.

#### **8.1.1 BPU CONTRACT MANAGER RESPONSIBILITIES**

For an agency contract where only one State office uses the contract, the BPU Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The BPU Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The BPU Contract Manager is responsible for coordinating the use and resolving minor disputes between the contractor and any component part of the BPU Contract Manager's Department.

If the contract has multiple users, then the BPU Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the BPU Contract Manager.

#### **8.1.2 COORDINATION WITH THE BPU CONTRACT MANAGER**

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the BPU Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the BPU Contract Manager. The contractor may contact the BPU Contract Manager if the contractor can not resolve a dispute with contract users.